

APPLICANT:
Catherine L. Gray

REQUEST: A special exception to permit
a personal care boarding home

HEARING DATE: March 14, 2007

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5575

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Catherine L. Gray

LOCATION: 415 Gilmore Road – Joppatowne/Section IV
Tax Map: 69 / Grid: 1B / Parcel: 135 / Lot: 7
First (1st) Election District

ZONING: R3 / Urban Residential District

REQUEST: A special exception, pursuant to Section 267-53F(8) of the Harford County Code, to permit a personal care boarding home in the R3 District.

TESTIMONY AND EVIDENCE OF RECORD:

Catherine Gray, Applicant, described her property as a 10,612 square foot lot, improved by a split level, single family residence. Ms. Gray has owned the property since September 2006.

The house contains four bedrooms, three baths, a dining room, living room, kitchen, sitting room and deck. The Applicant currently has three residents living within the house for whom she cares, although she does not have a Health Department permit for this use. Ms. Gray states, however, that she will apply for and receive a State permit upon obtaining her zoning approval. Ms. Gray lives downstairs in the house; her residents live upstairs.

The Applicant requests permission to ultimately have up to four residents within the house. These residents will use two bedrooms, each having a separate bathroom. The Applicant has had one of the current residents with her for the past five years. Another resident has been with her for four years. The third of her current residents has been with her for over two years. All of the current residents are ambulatory, and are well capable of occasionally leaving the house on their own.

Case No. 5575 – Catherine Gray

Ms. Gray believes she complies with all current State regulations for an assisted living facility. Her current residents are very active and attend senior programs outside of the property. Ms. Gray has a visiting nurse on call who will be at the property two or three times per month. She has another individual who will help her. However, Ms. Gray has no other employment, and expects to be at the house substantially all of the time with the residents. Ms. Gray will be their primary care giver.

The Applicant explained that she plans to make no changes to the exterior appearance of her property, although she would like to put an awning over the existing deck. The Applicant understands that she must, if granted approval, construct four parking spaces on her property. At present she does not have four spaces.

The Applicant considers herself a care giving person. She is committed to providing care to elderly individuals in need of assistance. She believes she can comfort them and give proper care. The situation she provides for the residents is a homelike setting, one which is clean, well maintained and supportive. Upon cross-examination by a neighbor, Ms. Gray stated that it is not her intent to make her neighbors uncomfortable. She will make efforts to maintain a good environment, one which should not threaten her neighbors. She will have no problem finding a sufficient number of elderly people to care for. She has no intention of admitting to her residence juveniles or non-elderly residents.

Next for the Harford County Department of Planning and Zoning testified Dennis Sigler. Mr. Sigler indicated that the Department had reviewed the request for a personal care boarding home. The Department finds that the Applicant complies with all specific requirements, with the exception that the Applicant must provide four parking spaces. The Department believes it will be relatively easy to provide the four parking spaces, as shown on a drawing in the file and marked Applicant's Exhibit 1. Mr. Sigler and the Department also believe the use to be compatible with other existing uses in the neighborhood. The Department concurs with Ms. Gray's request that the residents be limited to four in number.

James Petnic who residents at 507 Grigsby, testified in opposition that the Joppa/Joppatowne Community Plan, which is part of the Harford County Comprehensive Plan, prohibits the kind of uses proposed by the Applicant.

Mr. Petnic has lived in the Joppa/Joppatowne area since 1965. He is opposed to the special exception request. Ms. Gray's home was built as a single family residence, not as an apartment house or as a business location. Furthermore, as stated above, the Joppa/Joppatowne Community Plan does not recognize this type of use. The goal of the Joppa/Joppatowne Community Plan is to encourage a sustainable community, one which will encourage the rehabilitation of the community. These are the guiding principles of the community plan. Ms. Gray's use is in violation of those principles. The Joppa/Joppatowne Community Plan also supports Smart Growth principles. Again, Ms. Gray's plan is not in conformity with Smart Growth principles.

Case No. 5575 – Catherine Gray

The Joppatowne area is a high intensity area, located within the development envelope. The Community Plan is an attempt to improve the strength and image of the area. Planned growth is supported. The use as proposed by the Applicant is not in keeping with these goals. Mr. Petnic explained that there have been problems with other group homes within the community. One incident resulted in a main road in the community being closed by the police for almost four hours. The Joppa/Joppatowne Community Council also has determined that rental properties pose a threat to the community and are to be discouraged. Ms. Gray's use is inappropriate, it does not help foster community growth, and is not in keeping with the goals of the community.

Next in opposition testified Hank Sedula of 508 Garnett Court. Mr. Sedula has been a resident of the area since 1965. He concurs with the reasons for opposition as given and shares Mr. Petnic's fears.

Ms. Gray, in rebuttal, stated that she will have no juveniles at her property. Her house is well maintained. She has made certain improvements to the house since she bought it. She believes it is an attractive house and in keeping with the neighborhood. She does not have children as residents. Residents are adults. They are not criminals. They want to live in a good place. Nothing has happened since she has lived on the property with the residents to cause any neighborhood concern. She says nothing will happen.

Mr. Petnic, again, testified that the use is inappropriate and contrary to the renewal and sustainability of the community.

There was no further evidence or testimony given in opposition.

APPLICABLE LAW:

The Applicant is requesting a special exception to Section 267-53F(8) of the Harford County Code which states:

- “(8) Personal Care Boarding Homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB, and VR Districts, provided that:*
 - (a) The proposed use shall be located in a single-family detached dwelling.*
 - (b) The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.*
 - (c) maximum density of one (1) boarded per two thousand (2,000) square feet of lot area shall be maintained.*

Case No. 5575 – Catherine Gray

- (d) *Adequate off-street parking shall be provided.*
- (e) *Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.”*

Section 267-51 of the Harford County Code defines Purpose as:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of Part 1.”

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and is discussed in further detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant proposes a four resident personal care boarding home within a R3/Urban Residential area of Joppatowne, Maryland. As will be discussed below, the Applicant meets all specific special exception requirements. She will make virtually no change to the exterior appearance of the house with the exception of installing a parking pad sufficient for four cars. In truth, there should be little outward indication to the neighborhood that the residence will be used as a personal care boarding home. However, certain of the neighbors have expressed their concern that the use is one which is not appropriate for a residential subdivision, and is, more specifically, in violation of the goals and objectives of the Joppa/Joppatowne Community Plan. In essence, the protesting neighbors believe that having such a group home is out of keeping with the residential community which the Plan attempts to foster, and which the residents are attempting to maintain and sustain.

While well spoken and understandable, the fears of the neighbors cannot be used to override the clear principles which must be applied in a review of the special exception request. Simply stated, this personal care boarding home, as a special exception, has been determined by the Harford County Council to be compatible with principle permitted uses in the R3/Urban Residential District. Absent some compelling reason, the use cannot be denied. Ms. Gray’s proposed use will, in fact, have no more of an adverse impact than such a use would if located at any other location within the zone. Accordingly, for reasons discussed in more detail below, the special exception must be approved. Nevertheless, as noted above, the objections of the neighbors are well reasoned, articulately made, and are understandable. Those concerns can be addressed, at least in part, by the imposition of appropriate conditions upon approval.

Case No. 5575 – Catherine Gray

The analysis of Ms. Gray's request must first be examined in light of the specific requirements of § 267-53F(8) of the Harford County Development Regulations as follows:

(8) *Personal Care Boarding Homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB, and VR Districts, provided that:*

(a) *The proposed use shall be located in a single-family detached dwelling.*

The property is zoned R3, and the use will be in a single family detached dwelling.

(b) *The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.*

This requirement is met.

(c) *maximum density of one (1) boarded per two thousand (2,000) square feet of lot area shall be maintained.*

A maximum of four boarders is proposed, requiring 8,000 square feet. 10,600 feet is provided. This condition is accordingly met.

(d) *Adequate off-street parking shall be provided.*

The Department of Planning and Zoning has recommended, and it will be made a condition herein, that the Applicant provide for off-street parking spaces.

(e) *Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.*

The application is not for the construction of a new dwelling.

As can be seen, the Applicant clearly meets the specific requirements of the personal care boarding home special exception.

The application must now be judged in light of the considerations contained in Section 267-9I of the Harford County Zoning Code, Limitations, Guides and Standards as follows:

Case No. 5575 – Catherine Gray

- (1) *The number of persons living or working in the immediate area.*

There should be no impact on the number of persons living or working in the area if the proposal is granted. Four permanent residents, together with Ms. Gray, in a single family residential structure that has four bedrooms and three baths should not present any sort of an adverse impact on the neighborhood. In fact, the use should be virtually unnoticed by the neighbors. While it is true that the elderly residents may occasionally use the lawns of the property, its outdoor deck, perhaps may even walk through the neighborhood, this does not constitute an unusual impact and, in fact, would be a normal characteristic of almost any neighborhood.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The proposed personal care boarding home will generate no significant traffic. There are existing facilities for pedestrians in the area. The only unusual traffic which one can envision from such a use is, perhaps, an occasional call from a doctor, visiting nurse, or emergency responder. However, and again, this activity is normal activity for most neighborhoods.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The use will provide a need to the growing elderly population of Harford County.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such adverse impacts have been identified.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Joppa Volunteer Fire Department will provide service to the property. The project is served by public water and sewer service. The Applicant will be required to arrange for trash collection with a private hauler.

Case No. 5575 – Catherine Gray

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

As noted above, the use has been legislatively predetermined to be compatible with other principle permitted uses within this R3 District. As such, it is consistent with accepted planning principles.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such facilities have been identified. To the extent such facilities exist, there should be no adverse impact upon them.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the Master Plan.

Addressing the concerns of the neighbors, the assisted living facility is not, despite their protestations, appear to be contrary to the expressed goals of the Joppa/Joppatowne Community Plan. Assisted living facilities exist throughout our County, and have been determined to be accepted and compatible uses with certain conditions. The opposing neighbors have not identified any specific language of the Joppa/Joppatowne Community Plan which addresses personal care boarding homes, or which specifically finds them to be unacceptable. Even if, however, such language existed, it cannot override the intent of the legislature in creating this allowable use.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No sensitive natural features have been identified, nor should there be any impact on opportunities for recreation and open space.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Case No. 5575 – Catherine Gray

As can be seen, the application complies with both the specific requirements of the personal care boarding home special exception, and withstands review under the more generalized considerations contained in the Limitations, Guides and Standards section of the Code.

However, the use may still be denied if it is found to have an adverse impact on the surrounding community, or neighbors which is somehow more extreme than the impact would be regardless of where the use is located. In fact, however, there is little adverse impact of any kind which has been identified or which can be readily foreseen as emanating from this proposed use. Personal care boarding homes, no doubt, have some impact. There may be some increased traffic of a medical nature to the property; perhaps visitors to the property would be more frequent than visitors to traditional family occupied homes; perhaps the residents will be seen as walking throughout the subdivision more than other residents would be. However, these are impacts regardless of where the use would be located, and cannot be used as a basis for denial of the request. No other particular impacts are noted, nor has any other particular impact been identified by any of the opponents, or by the Department of Planning and Zoning.

Accordingly, it is found that the use has no greater adverse impact at the proposed location than it would at any other within the zone and it accordingly conforms to the review requirements of Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981).

CONCLUSION:

It is accordingly recommended that the requested special exception be granted, subject to the following conditions:

1. The Applicant shall submit a detailed site plan to be reviewed and approved thru the Department Advisory Committee. The site plan shall show a minimum of four parking spaces and landscaping around the parking area.
2. Other than the installation of the parking area and improvements to the outside deck, there shall be no change to the exterior appearance of the house or grounds.
3. The property and lawns shall remain well maintained, and shall not be allowed to deteriorate. Maintenance shall be performed as and when needed.
4. The Applicant shall obtain all necessary approvals and permits from the Department of Public Works for the access from Glendel Court to serve the parking area.

Case No. 5575 – Catherine Gray

5. The Applicant shall within 90 days obtain all necessary State and County permits to operate the personal care boarding home. The approval shall cease if necessary State permits are not obtained within 90 days, or are allowed to lapse.
6. The Applicant shall be limited to four boarders at this location.
7. This approval is for the Applicant's use only, and shall cease at such time as the property or personal care boarding business is sold, or if Catherine Gray ceases acting as the primary care giver.

Date: March 30, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on APRIL 27, 2007.